

Attorney Docket No.: FUJI 17.634A (100794-00500)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant(s) : Ken'ichi IMAMATSU

Confirmation No.: 4605

Serial No.: 10/705,437

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Title: **METHOD AND APPARATUS FOR UPDATING
SOFTWARE IN RADIO TERMINAL DEVICE**

Examiner: Michael D. Yaary

Group Art Unit: 2193

November 30, 2009

REPLY BRIEF

Board of Patent Appeals and Interferences
Assistant Commissioner for Patents
Washington, D.C., 20231

Sir:

Appellants submit this Reply Brief in response to the Examiner's Answer mailed on October 5, 2009. All requisite fees may be charged to Deposit Account No. 50-1290.

In response to Appellant's March 4, 2009 Appeal Brief, the Examiner maintained that

U.S. Patent No. 5,848,064 to Cowan adequately discloses all features of the claimed invention.

Appellant, again, respectfully submits that the cited disclosure of Cowan fails to disclose the features of the claimed invention.

Claims 13, 22, 26, 33-38, and 45

The Examiner maintained that the "list of file names" described in Cowan inherently discloses the claimed feature of notifying a number of divided blocks:

"The field includes a version identifier and a *list of file names* relating to the memory, file transfer, file types, etc. Further, (column 11, lines 46-51) it is disclosed of stepping through each file in the list transmitted for downloading and transferring of the file. Thus, transmitting of said stored software based on a number of divided blocks. The feature of 'a number' or 'value N' is an inherent feature in the list; as the packet contains a list of files, thus this inherently equates to a certain number or quantity." Page 5, line 19 to page 6, line 6 of the Examiner's Answer. (Emphasis as cited)

Again, column 8, lines 57-59 and column 11, lines 24-35 of Cowan, as cited by the Examiner, only describe a "list of file names." Please see, also, page 4, lines 4-5 of the Examiner's Answer. Such a list does not inherently **notify** any number of items on the list in that it would require an additional step of counting—or determining—the number of items on the list. Cowan, as cited and relied upon by the Examiner, fails to disclose such a counting or determining step.

Indeed, as the Examiner described in the above-cited portion of the Examiner's Answer, Cowan only describes a mobile terminal "sequentially stepping through each file name listed" to download the files—and while stepping through the list, only determining whether there are additional files listed:

“Upon receiving the Package Definition Packet 124, the mobile terminal processor 40 initially compares the version identifier included in the package definition field 126 with the version identifier previously stored by the processor 40 the last time the mobile terminal downloaded files from the host computer 30. If the versions are identical, then the mobile terminal 36 concludes that no upgrades or revisions have been performed to the files included in the respective package. If the versions are different, then the mobile terminal 36 stores the information from the Package Definition Packet 124 and then begins the process of sequentially stepping through each file name listed in the package definition file in the package definition field 126 and transmitting a request that the host computer 30 transfer the actual file so that it may be downloaded and stored in the mobile terminal 36.”

Column 11, lines 36-51 of Cowan (emphasis added);

“Next, the mobile terminal 36 generates and transmits another file request packet 130 requesting that the next file included in the list of file names in the package definition field 126 be downloaded to the mobile terminal 36. Similarly, the host computer 30 responds by transmitting another file packet 134 including the contents of the file named in the file request field 132. Such sequential exchange of file requests and the transfer of files between the mobile terminal 36 and the host computer 30 continues as represented in FIGS. 7(g)-7(h) until the mobile terminal has requested and received each of the files named in the package definition file received in the package definition field 126.” Column 12, lines 7-19 of Cowan (emphasis added); and

“If the file packet 134 is received by the processor 40 as determined in step 168 and as represented in FIG. 7(f), the processor 40 proceeds to step 172. In step 172 the processor 40 stores the file contained in the file field 136 in the mobile terminal memory 50 according to the appropriate mode (e.g., replace or fail safe) and in the location specified by the information previously obtained in the package definition field 126. Thereafter, the processor 40 proceeds to step 174 in which it determines if there are more files to be downloaded from the host computer 30. Specifically, the processor 40 determines whether there exists any more files in the list of file names provided in the package definition field 126 which have not yet been downloaded. If additional files exist, the processor 40 proceeds from step 174 back to step 166 in which the processor 40 transmits a file request packet 130 requesting that the next file in the list be downloaded (e.g., FIG. 7(g)). In the event the last file has already been transferred as determined in step 174, the downloading of the new

version of the operating software is complete. Hence, the processor 40 proceeds from step 174 to step 162 mentioned above.” Column 13, lines 47-67 of Cowan. (Emphasis added)

Therefore, the mobile terminal described in Cowan clearly does not ever determine the number of files to be downloaded, and only moves through a file name list to download the files listed until no files remain on the list. Thus, again, Cowan only describes providing a list of file names to a mobile terminal and, therefore, fails to disclose notifying a number of divided blocks, as claimed.

And Appellant, thus, respectfully submits that, contrary to Examiner’s assertions, claims 13, 22, 26, 33-38, and 45, which recite features corresponding to the above, are patentable over Cowan for at least the foregoing reasons.

Claims 17, 27, and 39-41

The Examiner also maintained that column 14, lines 1-9 of Cowan adequately disclosed the claimed feature of stopping a download when a controller detects an operation for responding to an incoming call.

In particular, the Examiner alleged that the cited description of Cowan “would include all operations associated with the mobile terminal, including calls.” Page 6, line 12 of the Examiner’s Answer. But the cited portion of Cowan, again, only includes description of terminating a download routine in the event some kind of failure occurs:

“Regarding steps 154, 158 and 168 discussed above, it will be appreciated that the processor 40 preferably is programmed to retransmit a respective packet only a predetermined number of times (e.g., five), and to terminate the routine in the event a response still is not received. This avoids the mobile terminal becoming hung up due to a system failure. In such case, the processor 40 allows the mobile terminal 36 to continue to operate

with the existing version of software stored therein.” Column 14,
lines 1-9 of Cowan. (Emphasis added)

Thus, Cowan, as cited and relied upon by the Examiner, clearly fails to disclose the claimed feature of stopping a download of software from a software supplying device when a controller detects an operation for responding to an incoming call. Accordingly, Appellant respectfully submits that claims Appellant respectfully submits that claims 17, 27, and 39-41 incorporating features that correspond to the above are patentable over Cowan for at least the foregoing reasons. Appellant refers to page 29, lines 1-25 of the specification for an exemplary embodiment of and support for this feature.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,

/Dexter T. Chang/
Dexter T. Chang
Reg. No. 44,071

CUSTOMER NO.: 026304
Telephone No.: (212) 940-6384
Fax No.: (212) 940-8986/87
Docket No.: FUJI 17.634A (100794-00500)
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